

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Romero Analyst: Jeani Brent Bill Number: AB 1220

Related Bills: See Prior Analysis Telephone: 845-3410 Amended Date: 05/12/1999

Attorney: Patrick Kusiak Sponsor:

**SUBJECT:** Corporations to Provide and FTB to Publish Information on Certain Tax Credits Claimed By Corporations

- ☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended April 26, 1999.
- ☐ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- ☐ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.
- ☒ FURTHER AMENDMENTS NECESSARY.
- ☐ DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.
- ☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED April 26, 1999 STILL APPLIES.
- ☒ OTHER - See comments below.

### SUMMARY OF BILL

Under the Administration of Franchise and Income Tax Law, this bill would require corporate taxpayers that claim certain credits to provide the department with specified information regarding the credits claimed and carried over, number of employees, and the wages and health benefits provided to its employees.

This bill also would require the department to publish the information in a manner that identifies the name of the corporation with the specified information reported by that corporation. The bill would require the information to be provided to the Legislature and the public in a manner determined by the department and to be published on the department's website.

### SUMMARY OF AMENDMENT

The May 12, 1999, amendments resolved the implementation and technical considerations identified in the department's analysis of the bill as amended April 26, 1999. Except for the implementation and technical considerations, the department's analysis of the bill as amended April 26, 1999, still applies.

Upon further review of this bill, the department has identified further implementation considerations costs that would be associated with the administration of the bill, as shown below.

### IMPLEMENTATION CONSIDERATIONS

Pursuant to discussions with the author's staff, the attached amendments would resolve the following implementation considerations:

Board Position:	Department/Legislative Director	Date
<input type="checkbox"/> S		
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NA		
<input type="checkbox"/> O		
<input type="checkbox"/> OUA		
<input type="checkbox"/> NP		
<input type="checkbox"/> NAR		
<input checked="" type="checkbox"/> PENDING	<b>Johnnie Lou Rosas</b>	<b>6/23/1999</b>

### **Imposition of Penalty and Suspension of Credit**

The bill states that the credits would not be allowed until the taxpayer files the required information.

- It is unclear what would happen after the passage of the full 27-month period (90 days after notice plus 24 months) and the imposition of the maximum \$25,000 penalty if the taxpayer never provides the information.
- If a taxpayer claims the credit and, upon notice and the imposition of the first penalty, decides that it would be better not to claim the credit, it is unclear whether the department must still impose the penalty even though the taxpayer files an amended return and decides not to claim the credit.
- It is unclear what would happen if the taxpayer claims a credit and fails to provide the information, but in the subsequent years, claims the carryover for that credit.

The proposed amendments would change this provision to require that the full penalty would be imposed and the credits would be denied if the taxpayer fails to file the information with the tax return and the failure continues for 90 days after the department sends a demand to the taxpayer to file the information. The amount of the penalty is left blank pursuant to the request of the author's staff.

### **Credit vs. Carryover**

The bill would require taxpayers to report the amount of any carryover credits claimed and would impose the penalties and deny the credits for failure to provide this information.

- If a taxpayer does not claim any credits, but instead claims only carryover of credits claimed in earlier years, it is unclear whether the bill would "suspend" the allowance of the carryover as it would the credit.
- The bill states that the information provided must include the amount of "any carryover credits claimed." This appears to reach beyond providing information on the carryover of any of the listed credits, to instead require information on "any carryover credits claimed," including carryovers for credits not listed in the bill.

The proposed amendments would provide that carryover of credits would be denied in the same manner as would the credit, as discussed above. Also, the amendments would clarify that the carryover information required would be only that related to the credits specified in the bill.

### **Multi-Business Taxpayers**

The bill would require any taxpayer that claims any of the credits to provide information about the taxpayer's activities.

- If the taxpayer is a world-wide apportioning corporation, it is unclear whether the bill would require the corporation to include world-wide information, or only the information for the trade or business that generated the credit. For instance, if a world-wide apportioning corporation has a trade or business inside an enterprise zone and claims the enterprise zone credits, it is unclear whether the bill would require the corporation to report information for all of its world-wide locations, or only the information for the trade or business inside the enterprise zone, which generated the credit.
- If the taxpayer is a large corporation with numerous subsidiaries, it is unclear whether the corporation would have to fill out a separate information form for each subsidiary, or would include all information from all subsidiaries on one form.

The proposed amendment would provide that, for taxpayers claiming any of the economic development area credits, the information provided must be only that information relating to the taxpayer's trade or business activities in the economic development area. For taxpayers claiming any of the other credits, only information relating to the taxpayer's trade or business activities in this state would be required.

If this bill is amended as proposed, staff anticipate that this bill would be implemented as follows:

- Approximately 8,000 taxpayers currently claim one or more of the listed tax credits. Staff anticipates that these taxpayers likely would be the largest corporations in the state because the largest corporations are the ones most likely to claim the listed credit. Many returns for large corporations are so large they come in boxes.
- A check box would be added to the front of the return for taxpayers to indicate that they have claimed one or more of the listed tax credits. Another form also would be developed for taxpayers to provide the information.
- Upon initial processing, any returns with the box checked would be pulled out of normal processing and sent to a special unit, which would be created to administer the provisions of this bill.
- The special unit would review each pulled return to determine whether the information form is included and is complete.
- If the form is included and is complete, the information reported would be entered into a data base for publication and for inclusion on the department website.
- If the form is not included or is not complete, the special unit would issue a notice to the taxpayer to provide the information within 90 days and would hold the return for that time period.
  - If the taxpayer provides the information within 90 days, no penalty would be imposed and no credits would be denied, and the return would be returned to the normal processing system after the information is entered into the data base.
  - If the taxpayer fails to provide the information within 90 days, the special unit would issue a notice of proposed assessment that would deny the credits and impose the penalty provided in this bill.

#### DEPARTMENTAL COSTS

Under the above discussed implementation plan, staff preliminarily estimates that the order of magnitude of the departmental costs would be as shown in the following table:

Franchise Tax Board Order of Magnitude Costs (in millions)		
	1999/00	2000/01
Personal Services (approximately 27 personnel years)	0.9	0.9
Operating Expense and Equipment	0.7	0.2
Departmental overhead	0.1	0.1
Total	1.7	1.2

This analysis does not take into account all of the facilities and related costs that might be incurred to create space for the special unit that would be created. These costs have the potential of significantly increasing the costs identified in this analysis.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 1220  
As Amended May 12, 1999

AMENDMENT 1

@@@@LEG. COUNSEL: Please modify Section 1 of the bill as follows:

SECTION 1. Section 19141.7 is added to the Revenue and Taxation Code, to read:

19141.7. (a) Any taxpayer subject to any tax imposed by Part 11 (commencing with Section 23001) ~~and claiming any credit allowed by any of the sections~~ that meets the criteria specified in subdivision (c) shall provide the following information for each income year as part of the taxpayer's original return ~~for each income year~~ in a form and manner specified by the Franchise Tax Board no later than the due date of that return, as provided in Section 18601, or the extended due date of that return, as provided in Section 18604:

(1) The name of the taxpayer claiming the credit or carryover of credit specified in subdivision (c).

(2) The amount of each credit specified in subdivision (c) claimed by the taxpayer ~~in the income year.~~

(3) The amount of any carryover ~~credits~~ of each credit specified in subdivision (c) claimed by the taxpayer ~~in the income year.~~

(4) The number of full-time equivalent employees employed by the taxpayer ~~within this state as specified in subdivision (d)~~ as of the first day of the taxpayer's income year. ~~For purposes of this section, "full time equivalent employees" means the number of employees working 35 or more hours per week. Employees working fewer than 35 hours per week shall be reported as a fraction, the numerator of which is the number of hours worked by that employee in the prior week and the denominator of which is the number of hours in the taxpayer's standard full time workweek. The number of full-time equivalent employees employed by the taxpayer shall equal the following:~~

(A) The total number of hours worked for the taxpayer, as specified in subdivision (d), by employees (not to exceed 1,750 per employee) who are paid an hourly wage divided by 1,750.

(B) The total number of months worked for the taxpayer, as specified in subdivision (d), by employees who are salaried employees divided by 12.

(5) The median weekly wage or salary paid to the ~~corporation's~~ taxpayer's nonsupervisory employees during the income year as specified in subdivision (d).

(6) The percentage of nonsupervisory employees for which the ~~corporation~~ taxpayer pays at least 80 percent of the health or medical insurance premiums during the income year as specified in subdivision (d). For purposes of this section, "health or medical insurance premiums" means any payment made with respect to health or medical insurance costs of the corporation's employees for which a deduction is claimed pursuant to ~~Section 162 of the Internal Revenue Code~~ section 24343, relating to trade or business expenses.

(b) A taxpayer claiming ~~credits~~ any credit or carryover of credit specified in subdivision (c) shall retain and make available to the Franchise Tax Board, upon request, any documents and information necessary to substantiate the information specified in subdivision (a).

(c) Subdivisions (a) and (b) shall apply to any taxpayer ~~claiming credits~~ that has gross receipts, less returns and allowances reportable to this state, of five million dollars (\$5,000,000) or more and that claims any credit or any carryover of credit allowed by any of the following sections:

- (1) Section 23609 (relating to qualified research expense).
- (2) Section 23612.2 (relating to enterprise zone sales tax).
- (3) Section 23622.7 (relating to enterprise zone wages).
- (4) Section 23622.8 (relating to manufacturing enhancement area wages).
- (5) Section 23624 (relating to inmate labor wages).
- (6) Section 23633 (relating to targeted tax area sales tax).
- (7) Section 23634 (relating to targeted tax area wages).
- (8) Section 23636 (relating to joint strike fighter wages).
- (9) Section 23645 (relating to local area military base recovery area

sales tax).

(10) Section 23646 (relating to local area military base recovery area wages).

(11) Section 23649 (relating to qualified manufacturing property).

(d) (1) In the case of a taxpayer that claims any credit or carryover of credit allowed by sections 23612.2 or 23622.7, the information required by subdivision (a) for those credits shall be limited to information relating to the taxpayer's trade or business activities within the enterprise zone.

(2) In the case of a taxpayer that claims any credit or carryover of credit allowed by section 23622.8, the information required by subdivision (a) for that credit shall be limited to information relating to the taxpayer's trade or business activities within the manufacturing enhancement area.

(3) In the case of a taxpayer that claims any credit or carryover of credit allowed by sections 23633 or 23634, the information required by subdivision (a) for those credits shall be limited to information relating to the taxpayer's trade or business activities within the targeted tax area.

(4) In the case of a taxpayer that claims any credit or carryover of credit allowed by sections 23645 or 23646, the information required by subdivision (a) for those credits shall be limited to information relating to the taxpayer's trade or business activities within the local agency military base recovery area.

(5) In the case of a taxpayer that claims any credit or carryover of credit allowed by sections 23609, 23624, 23636, or 23649, the information required by subdivision (a) for those credits shall be limited to information relating to the taxpayer's trade or business activities within this state.

(e)(1) If a taxpayer claiming ~~credits~~ allowed by any of the sections ~~any credit~~ specified in subdivision (c) fails to file the information required under subdivision (a), ~~the~~ both of the following shall apply:

(A) The taxpayer shall pay a penalty of ~~one thousand dollars (\$1,000)~~ for each the income year with respect to which the failure occurs.

(B) Any credit or carryover of credit specified in subdivision (c) claimed by the taxpayer in the income year shall be denied.

(2) No penalty shall be imposed and the credits shall not be denied if:

(A) the information required under subdivision (a) is filed within 90 days after the Franchise Tax Board sends the taxpayer a notice and demand to file the

required information.

~~(2) If any failure to file the information specified in subdivision (a) continues for more than 90 days after the date on which the Franchise Tax Board mails notice of that failure to the taxpayer, the taxpayer shall pay a penalty (in addition to the amount required under paragraph (1)) of one thousand dollars (\$1,000) for each 30 day period (or fraction thereof) during which the failure continues after the expiration of the 90 day period. The increase in any penalty under this paragraph shall not exceed twenty four thousand dollars (\$24,000) with respect to any income year.~~

~~(e) Notwithstanding any other provision in Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, none of the credits specified in subdivision (c) shall be allowed until the information required under subdivision (a) has been provided to the Franchise Tax Board by the taxpayer.~~

~~(f) (B) No penalty shall be imposed and no credit or carryover of credit shall be denied under this section for any failure that the failure is shown to be due to reasonable cause and not willful neglect.~~

(g) The Franchise Tax Board shall annually publish the information required by subdivision (a) for the most recent year available. This publication shall include the name of any corporation claiming the credits specified in subdivision (c) along with all of the information required to be filed pursuant to subdivision (a). The publication of this information shall be provided to the Legislature and the public in the form and manner as determined by the Franchise Tax Board and shall include posting on the Franchise Tax Board's Internet website.